

The clinical expert in cases involving nursing and residential homes

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Introduction

A clinical negligence claim affecting an older person will often involve a period of treatment in a nursing or residential home. This is because older people are generally less able to adapt to adversity. Any hospital treatment that results in a period of immobility, for example major surgery, a stay on ITU or a major medical illness will lead to profound weakness and may make it impossible for an older person to retain independent mobility. They thus become dependent on someone else for daily activities and if there is no-one else at home, this may require a period of institutional care.

Issues to consider

The matter is, of course, not straightforward because about a third of older people move into a care home at some time anyway because of an illness or increasing frailty and not because of negligent treatment. This decision is sometimes taken by the patient or their family independently but often happens after a hospital stay. In the latter case an assessment is made when a patient is ready for discharge from hospital and this involves physio and occupational therapy, as well as medical and nursing staff. Often a social work assessment is needed to explain what services are available in the community, how much these will cost and how they can be accessed. There are, however, times when a patient will take it into their own hands to arrange convalescent care in a home or the medical and nursing staff will pressurise them into doing this without formal assessment of whether care at home is possible.

Care for frailer people

Most older people can be safely managed at home. Social services can, in most areas, arrange for three care calls a day. These will involve a care assistant calling for between half an hour and an hour each time. During this time, they can make a hot drink, defrost or cook a meal and carry out personal care such as washing,

showering, changing incontinence pads and toileting. Carers are not able to administer drugs or dress wounds. Immobile patients can be managed with a portable hoist and if they are at risk of pressure sores they will often have a hospital bed with pressure relieving mattress. Various other equipment might be needed around the house, such as raised toilet seats, rails and even a stair lift, although this is very rarely provided by social services until the patient's immobility has been shown to be longstanding.

From the above you can see that some clinical features mitigate against living at home. Most important is cognitive impairment, particularly if the person is not safe to be left alone for a period of time because they might do something dangerous. Living alone may also be difficult when they are too immobile to take themselves to the toilet and this needs to be done more than three times a day or if they have medical needs such as unstable diabetes or the need for regular wound dressings that cannot be managed by the GP and district nurse.

Difference between care and nursing homes

Care (residential) Homes provide basic food, shelter and companionship. They are staffed mainly by care assistants i.e. not trained nurses and can manage patients who need some help with walking and getting to the toilet. Many care home residents are confused or have dementia and this is not normally a problem unless they also show aggression or have behavioural problems. Care Homes will not usually manage patients who need a hoist so residents need to be able to transfer from a bed to a chair with the help of one or two people.

Nursing Homes can deliver full nursing care including pressure sore management, hoisting, bed baths and the managing of gastrostomy tubes. They always have at least one registered nurse on duty but the patients must be medically stable and not require frequent changes of medication or the administration of unusual drugs.

Assessing need for care

Lawyers prosecuting or defending claims need to know what level of care was needed as opposed to desired and for how long this need actually lasted. It is also important to ensure that the clients and their families are aware of the difference between nursing and residential homes. The former are much more expensive because of the nursing care they provide. I have known patients book themselves into a nursing home for convalescence because the home has wonderful grounds, is

in an historic building or a desirable location without realising that they are paying for nursing care that they don't need. Sometimes, after a period of convalescence, patients have become used to the social life and well maintained surroundings of a home and don't relish returning to live by themselves. They therefore remain in a care setting much longer than actually justified by their clinical condition not realising that they may have to bear the expense of this themselves.

Expert advice

Consultant geriatricians are well placed to give expert advice on such cases. As part of their training and everyday clinical practice they will see large numbers of patients who are assessed for and eventually placed in both nursing and residential homes or go home with large care packages. They will be familiar with the assessment procedures carried out by social services departments and the legal rules relating to NHS funding the care in England and Wales. With a simple examination and questioning of staff or family they should be able to make a fair assessment of whether somebody requires residential care, nursing care or could be cared for at home.

Often I am asked whether a patient would have required nursing care at some time in the future if a given event hadn't happened. This needs careful analysis of all the patient's medical problems and a review of their records to see how each condition is progressing. This will enable me to make a judgement based on experience as to whether existing conditions would have led to the patient needing care and if so when. Although such judgments are always subjective, as a geriatrician I have had extensive experience of managing such patients with a wide variety of medical and surgical conditions over many years and can justify such estimates under cross-examination.